

BOARD OF ADJUSTMENT MEETING HELD IN THE COUNCIL CHAMBERS OF COTTONWOOD HEIGHTS AT 6 P.M. ON SEPTEMBER 07, 2006.

Members Present: James Adinaro, Bob Wilde, Farrell Jensen, Debbie Tyler, James Holtkamp, Paul Throndsen

Staff Present: Planning Director Michael Black, Associate Planner Glenn Symes, Planning Intern Bill Cobabe, City Attorney Shane Topham, Planning Coordinator Sherry McConkey

Excused: Noor UI-Hasan

Other Present: Barney Carlson, Jerome Gourley, Scott Clark, Brent Robinson, Jim Sciumbato, Mohammad Pourkazemi, Ryan Crockett, Chase Crockett, Leslie Baty

Chair Jensen called the meeting to order at 8:46 pm.

Mr. Cobabe checked the entry doors at 8:00, 8:10, 8:30, and 8:45 p.m. to verify they were open to the public.

Chair Jensen explained the rules of the meeting and explained that on July 26, 2006 the Board held a public hearing to discuss two action items. The first was Royal Oaks Estates, consideration and decision of an appeal of a Planning Commission decision granting conditional use approval for a Planned Unit Development.

The second item was the KEG Company variance request consideration, and decision of a variance request and appeal of a staff decision to extend the height of an existing 60 foot cell tower to 80 feet for the placement of a new antenna.

On August 10, 2006 the board felt the hearing should be continued to allow time for both sides to obtain expert testimony concerning key issues or if the board desired key issues that would be permissible to ensure clarification.

September 7, 2006 was listed as a continuation of the items from August 10, 2006 and the board is to make sure the correct procedures have been followed. Additionally, no comment shall be received on these items unless requested by the board. A written decision will be issued as a result of the meeting and sent out to each applicant.

1.0 **Decision - Royal Oak Estates PUD – 2400 East Creek Road**

1.1 Mr. Topham explained that a brief had been circulated to the board members with suggestions on how the meeting should run and asked if they had any questions.

1.2 Chair Jensen explained that the Board had completed a thorough review of the items on this agenda and the Board was prepared to state their decision.

- 1.3 **MOTION:** Mr. Wilde moved to agree with the HOA's assertion that the City's approval of the Project should not relieve the Developer of any obligation of compliance with the CCR's, to the extent that the CCR's affect a portion of the Project. To hold otherwise would seem to be an impermissible public intrusion into the private contractual rights and obligations of the parties subject to the CCR's.

The motion was seconded by Ms. Tyler and passed unanimously on voice vote.

- 1.4 **MOTION:** Mr. Holtkamp moved that the board reject the assertion of the home owners association that the number of lots of this project be reduced to an error in figuring the maximum density of the property. As noted in the Cottonwood Heights Municipal code section 19.78.020, the purpose of authorizing planned unit developments is to allow flexibility in the use of a site.

The motion was seconded by Mr. Throndsen and passed unanimously on a voice vote.

- 1.5 **MOTION:** Mr. Holtkamp moved that the board agree with the HOA's assertion that the Developer's fee ground underlying Creek Road should not be counted against the 20% Open Space Requirement. That is based on the city code section 19.78.100 (B) which provides "Open Space shall remain a recreational use". Ground being used for public purposes is not now, and likely will not in the foreseeable future be, in recreational use

The motion was seconded by Ms. Tyler and passed unanimously on voice vote.

- 1.6 **MOTION:** Mr. Holtkamp moved that the board affirms the decision by the Planning Commission to require a physical separation between the pavement section of Royal Lane and the Wall to provide a safe passageway for pedestrians. The issue of whether, and where, the sidewalk required by the Planning Commission be installed by the Developer is still unclear. While the City could require the Developer to install the sidewalk on public property or on property owned by the Developer, the City cannot legally require the Developer to install the sidewalk on, or otherwise improve, private property owned by another party. The issue of whether Royal Lane is private or public is crucial and undetermined at this time. Therefore, the Board will remand that issue back to the Planning Commission for additional review and determination.

The motion was seconded by Mr. Throndsen and passed unanimously on voice vote.

- 1.7 **MOTION:** Mr. Throndsen moved to remand to the Planning Commission to determine if construction of the proposed cast concrete wall in the flood control easement abutting the creek along Royal Lane would constitute a detrimental effect on the project that should be mitigated in some fashion perhaps by requiring any barrier between the project and Royal Lane be limited to wrought iron or other fencing that would preserve flood control access and view shed.

The motion was seconded by Mr. Holtkamp and passed unanimously on voice vote.

- 1.8 **MOTION:** Mr. Wilde moved to adopt the written decision as amended by the oral motions that have been made and with the modification of the flood control issue.

The motion was seconded by Mr. Holtkamp and passed unanimously on voice vote.

- 1.9 **MOTION:** Mr. Holtkamp moved to authorize Chairman Jensen to sign the written decision on behalf of the Board members.

The motion was seconded by Mr. Wilde and passed unanimously on voice vote.

2.0 **Decision – The KEG Company - Variance Request – 2375 E. Fort Union Blvd.**

- 2.1 **MOTION:** Mr. Wilde moved to deny the application for a variance to increase the height of a current cell tower from 60 feet to 80 feet based on the applicant's failure to meet the criteria of variance as set by Utah State Code.

The applicant's request for a variance from the height restriction in question should be denied because the Applicant has failed to meet its burden of proving that the literal enforcement of such height restriction will cause an unreasonable hardship on the applicant.

The applicant's request for a variance from the height restriction should be denied because the applicant has failed to meet the burden of proving that there are special circumstances attached to the Property that do not generally apply to other properties in the PF (Public Facility) zone.

The applicant's request for a variance from the height restriction in question should be denied because the applicant has failed to meet the burden of proving that granting the variance is essential to the enjoyment of a substantial property right possessed by the other property in the same zone.

The applicant's request for a variance from the height restriction in question should be denied because the applicant has failed to meet the burden of proving that granting the variance will not substantially affect the general plan and will not be contrary to the public interest.

The applicant's request for a variance from the height restriction in question should be denied because the applicant has failed to meet its burden of proving that granting the variance will not be contrary to the spirit of the City's land use ordinance.

The motion was seconded by Ms. Tyler.

Mr. Adinaro stated that at the meeting held on July 26, 2006 some of the members mentioned the possibility of the applicant reducing the height from the additional 20 feet to 6 feet and noted that the only issue before this board is that of a 20 foot increase. Mr. Adinaro explained that although they may be other alternatives available to the applicant the members would need to base their decision off of the original application and therefore would vote to deny the request.

The motion passed unanimously on voice vote.

- 2.3 **MOTION:** Mr. Throndsen moved to authorize Chairman Jensen to sign the written decision on behalf of the Board members.

The motion was seconded by Mr. Holtkamp and passed unanimously on voice vote.

3.0 **Planning Director's Report**

3.1 Mr. Black explained that an additional variance request would be coming to the Board for review.

3.2 Mr. Symes explained that an application had been received and is currently under review for a lot on Prospector that has a slope issue and the applicant is requesting front yard setback variance.

3.3 The Board determined October 12, 2006 at 6:30 p.m. the variance request would be heard.

4.0 **MOTION:** Mr. Throndsen moved to adjourn the meeting. Ms. Tyler seconded the motion and passed unanimously on voice vote.

The meeting adjourned at 9:33 p.m.

Approved: 12-11-2006 sm